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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,381	04/20/2004	Bach H. Le	049051-0233	3788
31824	7590	06/16/2008	EXAMINER	
MCDERMOTT WILL & EMERY LLP			PATHI, HARESH N	
18191 VON KARMAN AVE.			ART UNIT	PAPER NUMBER
SUITE 500			2154	
IRVINE, CA 92612-7108				
MAIL DATE		DELIVERY MODE		
06/16/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/827,381	<b>Applicant(s)</b> LE ET AL.
	<b>Examiner</b> Haresh N. Patel	<b>Art Unit</b> 2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(o).

#### **Status**

1) Responsive to communication(s) filed on 20 April 2004.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-35 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) \_\_\_\_\_ is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) 1-35 are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

## DETAILED ACTION

1. Claims 1-35 are presented for examination.

### *Election/Restrictions*

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-10, 16-20, 26-31, are drawn to, “receiving multiple (first and second upgrades, comparing the information about the upgrades at the client, upgrading based on the comparing result, etc”, classified in class 709, subclass 230.
  - II. Claims 9-11, 21-22, 32, are drawn to, “not receiving firmware upgrade, sending request for same firmware upgrade to different server, etc”, classified in class 709, subclass 219.
  - III. Claims 12-14, 23-25, 33-35, are drawn to, “automatically launching a loader program without operator intervention during booting up, read an address of a server from a memory within client, rebooting the client after the firmware is upgraded, etc”, classified in class 719, subclass 321.

3. The inventions are distinct, each from the other because of the following reasons:  
Inventions I to III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as, usage of receiving multiple (first and second) upgrades, comparing the information about the upgrades at the client, upgrading based on the comparing result, etc, lacking one or more of the particulars of

inventions II to III. Invention II has separate utility such as, usage of not receiving firmware upgrade, sending request for same firmware upgrade to different server, etc, lacking one or more of the particulars of inventions of I and III. Invention III has separate utility such as, usage of automatically launching a loader program without operator intervention during booting up, read an address of a server from a memory within client, rebooting the client after the firmware is upgraded, etc, lacking one or more of the particulars of inventions of I and II. See MPEP 806.05.

4. These inventions are distinct for the reasons given above, and the search required for each Group is different and not co-extensive for examination purpose. For example, the searches for the two inventions would not be co-extensive because these groups would require different searches on PTO's classification class and subclass as following:

- (a) Group I search (claims under Group I) would require use of search class 709, subclass 230 (not required for the inventions II-III).
- (b) Group II search (claims under Group II) would require use of search class 709, subclass 219 (not required for the inventions I, III).
- (c) Group III search (claims under Group III) would require use of search class 719, subclass 321 (not required for the inventions I, II).

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification as shown above, the extensive search required for one group is not required for the other groups as shown above, and have

acquired a separate status in the art because of their recognized divergent subject matter as shown above, restriction for examination purposes as indicated is proper.

6. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

7. Because these inventions are distinct for the reasons given above and the extensive search required for one group is not required for the other groups, restriction for examination purposes as indicated is proper.

8. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

9. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

10. A shortened statutory period for response to this action is set to expire 0 (zero) months and 30 (thirty) days from the mail date of this letter. Failure to respond within the period for

response will result in ABANDONMENT of the application (see 35 U.S.C. 133, MPEP 710.02, 710.02(b)).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Haresh Patel whose telephone number is (571) 272-3973. The examiner can normally be reached on Monday, Tuesday, Thursday and Friday from 10:00 am to 8:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached at (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Haresh N. Patel/

Primary Examiner, Art Unit 2154

5/31/2008